

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sonia Landino	Team: Team # 3	CCRB Case #: 201407082	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/05/2014 6:47 PM, Tuesday, 07/08/2014 12:00 AM, Friday, 07/11/2014 12:00 AM	Location of Incident: West 24th Street between Mermaid Avenue and Neptune Avenue and inside the 60th Precinct stationhouse	Precinct: 60	18 Mo. SOL 1/5/2016	EO SOL 1/5/2016	
Date/Time CV Reported Tue, 07/15/2014 12:40 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 07/15/2014 12:40 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Cecilia Pena	01303	949460	060 PCT
2. POM Vadim Osilenker	17098	950988	060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Christophe Vincenti	2500	944299	060 PCT
2. POM Stanislav Mozheiko	08995	953148	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Vadim Osilenker	Abuse of Authority: On July 5, 2014, in the vicinity of West 24th Street between Mermaid Avenue and Neptune Avenue in Brooklyn, PO Vadim Osilenker damaged § 87(2)(b) property.	A . § 87(2)(g)
B . POM Vadim Osilenker	Discourtesy: On July 5, 2014, in the vicinity of West 24th Street between Mermaid Avenue and Neptune Avenue in Brooklyn, PO Vadim Osilenker spoke rudely to § 87(2)(b)	B . § 87(2)(g)
C . POF Cecilia Pena	Abuse of Authority: On an unknown date in July 2014, inside the 60th Precinct stationhouse, PO Cecilia Pena refused to provide her shield number to § 87(2)(b).	C . § 87(2)(g)
D . POF Cecilia Pena	Discourtesy: On an unknown date in July 2014, inside the 60th Precinct stationhouse, PO Cecilia Pena spoke rudely to § 87(2)(b) and § 87(2)(b).	D . § 87(2)(g)
E . POM Vadim Osilenker	Other: PO Vadim Osilenker failed to cooperate with a CCRB investigation as required by NYPD Patrol Guide Procedure 211-14.	E . § 87(2)(g)

### Case Summary

On July 5, 2014, at approximately 6:47 p.m., PO Vadim Osilenker and PO Stanislav Mozheiko both of the 60<sup>th</sup> Precinct responded to a radio transmission regarding a male who was stabbed in the vicinity of West 24<sup>th</sup> Street between Mermaid Avenue and Neptune Avenue in Brooklyn. PO Osilenker was the operator of marked RMP 3334, while PO Mozheiko sat in the front passenger seat. § 87(2)(b) was present at the incident location and began video recording what was happening with his cell phone. As PO Osilenker was reversing the patrol car in order to leave the location, he hit § 87(2)(b) parked vehicle, causing § 87(2)(b) front bumper to crack in half (**Allegation A**). As PO Osilenker continued to reverse the patrol car onto the sidewalk, § 87(2)(b) yelled out to PO Osilenker that he had “broke his bumper”. In response, PO Osilenker told § 87(2)(b) to “step out of the fucking way” (**Allegation B**) and continued to reverse down the sidewalk.

Between July 6, 2014 and July 11, 2014, § 87(2)(b) and his mother § 87(2)(b) went to the 60<sup>th</sup> Precinct stationhouse multiple times to file an accident report regarding the aforementioned incident. On either July 8, 2014 or July 11, 2014, § 87(2)(b) and § 87(2)(b) spoke with PO Cecilia Pena of the 60<sup>th</sup> Precinct about their paperwork. PO Pena was sitting behind the front desk and she was dressed in uniform; however, she did not have her shield on due to being on medical restriction. During this interaction, § 87(2)(b) asked PO Pena for her name and shield number. During both of their phone statements, § 87(2)(b) and § 87(2)(b) indicated that PO Pena had stated her name, but then during their sworn statements, § 87(2)(b) and § 87(2)(b) did not mention if PO Pena stated her name. According to § 87(2)(b) PO Pena allegedly responded by asking § 87(2)(b) “if it looked like she was wearing a fucking badge” (**Allegation C and Allegation D**). According to § 87(2)(b) PO Pena had pointed to her nameplate and said that her name was on it and that she was not wearing a shield. § 87(2)(b) then alleged that PO Pena told him to “get the fuck out of the precinct,” to which he complied and exited the stationhouse (**within Allegation D**). According to § 87(2)(b) PO Pena had only screamed at § 87(2)(b) to leave the stationhouse.

This case was originally assigned to Inv. Cassandra Fendley on July 24, 2014, and it was reassigned to the undersigned investigator on January 2, 2015 for competition of the investigation and closure.

### Video Footage

On July 24, 2014, § 87(2)(b) provided to the CCRB, a 2:36 minute long video he captured on his cell phone (encl. 4G). The video begins by showing multiple marked RMPs, uniformed officers, and civilians standing around the incident location. At the 1:04 minute mark, a marked RMP is shown double parked on the right-hand side behind another marked RMP and next to § 87(2)(b) red Chrysler that was legally parked behind a tan truck. At the 1:11 minute mark, a marked RMP is shown reversing on an angle near § 87(2)(b) red Chrysler without lights or sirens on. The RMP was extremely close to § 87(2)(b) car and seemed to hit the front left-side bumper of § 87(2)(b) car (encl. 4H). At the 1:20 minute mark, the RMP is shown reversing near § 87(2)(b). While the RMP was approximately five feet away from where § 87(2)(b) was standing near the sidewalk, he yelled at PO Osilenker stating, “You just broke my car my man. You just broke my bumper.” At the 1:23 minute mark, PO Osilenker is heard saying “step out of the fucking way” through his driver’s side window that was rolled down. The video then shows PO Osilenker’s RMP reversing down the sidewalk without any lights or sirens on and no messages were transmitted over the loud speaker to warn civilians to move out of the way. At the

1:53 minute mark, § 87(2)(b) examined the damage on his car's bumper. At the 2:08 minute mark, a crack is shown on the left-hand side of § 87(2)(b) car bumper (encl. 4I).

## Mediation, Civil, and Criminal Histories

- § 87(2)(b) and § 87(2)(b) rejected mediation § 87(2)(b)
- As of December 5, 2014, § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York with regard to the incident (encl. 15A).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)], § 87(2)(a) 160.50

### Officer and Civilian CCRB Histories

- This is the first CCRB complaint against PO Vadim Osilenker during his three year tenure (encl. 2A).
- PO Cecilia Pena has been a member of the service for four years and there are no substantiated CCRB allegations against her (encl. 2B).
- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2C).
- § 87(2)(b) has filed one additional CCRB complaint § 87(2)(b)

## Civilian Statements

### Complainants/Victims

§ 87(2)(b) (Encl. 3B, 4A-4C)

- § 87(2)(b) filed this complaint with the CCRB and provided a phone statement on July 15, 2014. He provided a sworn CCRB statement on July 24, 2014.
- § 87(2)(b) is § 87(2)(b)'s son and was a victim at both incident locations.
- On July 5, 2014, § 87(2)(b) legally parked his car on West 24<sup>th</sup> Street between Mermaid Avenue and Neptune Avenue in Brooklyn. Many officers were at the location investigating a stabbing in the area and § 87(2)(b) began recording what was happening on his cell phone.
- As PO Osilenker began reversing the patrol car in order to leave the location, the patrol car hit § 87(2)(b) legally parked vehicle, causing § 87(2)(b) front bumper to crack in half. As PO Osilenker continued to reverse the patrol car onto the sidewalk, § 87(2)(b) yelled out to PO Osilenker that he had "broke his bumper." In response, PO Osilenker

- told § 87(2)(b) to “step out of the fucking way.” PO Osilenker then drove away and § 87(2)(b) video recorded the damage done to his car’s bumper.
- During § 87(2)(b) phone statement (encl. 3B), he stated that he and § 87(2)(b) went to the 60<sup>th</sup> Precinct stationhouse and filed an accident report, but he did not indicate on which date they had filed the report. During a subsequent visit to the stationhouse, § 87(2)(b) and § 87(2)(b) spoke with PO Pena, who was in uniform and identified via investigation as PO Cecilia Pena, and she told them that the accident report was thrown out because it was garbage. § 87(2)(b) then asked PO Pena for her name and shield. PO Pena gave her name, but said, “I’m not wearing a badge right now so I can’t give you that.” § 87(2)(b) was then told to leave the stationhouse. During this last visit to the stationhouse, § 87(2)(b) stated that § 87(2)(b) had spoken to Sgt. Christopher Vincenti of the 60<sup>th</sup> Precinct, but he could not hear what they were speaking about because he was told to leave the precinct. § 87(2)(b) did not indicate if Sgt. Vincenti was present during the allegations.
  - In § 87(2)(b) sworn statement (encl. 4A-4C), he indicated that he and § 87(2)(b) went to the 60<sup>th</sup> Precinct stationhouse three times and on their second visit, they spoke with Sgt. Vincenti who told them to return the next day. On July 8, 2014, § 87(2)(b) and § 87(2)(b) spoke with PO Pena, who told them that their accident report was garbage and was thrown out. Upon hearing this, § 87(2)(b) became upset and asked why the report was thrown out. § 87(2)(b) asked PO Pena for her name and badge number and PO Pena asked § 87(2)(b) “if it looked like she was wearing a fucking badge.” PO Pena then told § 87(2)(b) to “get the fuck out of the precinct.”
  - In § 87(2)(b) phone statement, he did not mention any profanity used by PO Pena at the stationhouse during any of their interactions. Only in his sworn statement did § 87(2)(b) mention profanity used by PO Pena. In both statements, § 87(2)(b) did not indicate that Sgt. Vincenti was present during the allegations.

**§ 87(2)(b) (Encl. 3B, 5A-5B)**

- § 87(2)(b) filed this complaint with the CCRB and provided a phone statement on July 15, 2014. She provided a sworn CCRB statement on July 24, 2014.
- § 87(2)(b) is the mother of § 87(2)(b) and she was not present during the incident that occurred on July 5, 2014, but was made aware of what had happened from § 87(2)(b) and by watching the video footage shown to her by § 87(2)(b).
- According to § 87(2)(b)’s phone statement (encl. 3B), she and § 87(2)(b) went to the 60<sup>th</sup> Precinct stationhouse approximately three to five times between July 6, 2014 and July 8, 2014 to file an accident report for the damage caused to their vehicle. On their second visit, § 87(2)(b) spoke to Sgt. Vincenti and showed him the video footage taken by § 87(2)(b). Sgt. Vincenti did not know what accident report they were talking about so he told them to return the next day. During § 87(2)(b) and § 87(2)(b) last trip to the 60<sup>th</sup> Precinct stationhouse, they spoke with a uniformed officer they identified by name as PO Pena. PO Pena told § 87(2)(b) and § 87(2)(b) that she was instructed to throw their accident report out because it was garbage. Upon hearing PO Pena’s comment, § 87(2)(b) asked PO Pena for her name and shield number. PO Pena gave § 87(2)(b) her name, but said “I’m not wearing a badge right now, so I can’t give you that.”
- In her sworn statement (encl. 5A-5B), § 87(2)(b) stated On July 7, 2014, she and § 87(2)(b) went to the 60<sup>th</sup> Precinct stationhouse and spoke with PO Pena, who filed their accident report and told them to return the next day to finish the paperwork. On July 8, 2014, § 87(2)(b) and § 87(2)(b) returned to the stationhouse, but none of the officers knew what accident report they were asking about and instructed them to return the next

day. On July 11, 2014, § 87(2)(b) and § 87(2)(b) returned to the stationhouse and spoke with PO Pena, who told them that she had thrown out the report because it was garbage. Upon hearing PO Pena say that the accident report was garbage, she asked PO Pena for her name and shield number. PO Pena pointed to her nameplate, said her name was on it, and that she was not wearing a shield. Later, § 87(2)(b) became upset and asked PO Pena why the accident report was garbage. In response, PO Pena screamed at § 87(2)(b) to leave the stationhouse.

- § 87(2)(b) did not mention any profanity used by PO Pena during both of her statements and only indicated in her sworn statement that she did not remember if PO Pena used profanity during their interaction. § 87(2)(b) only mentioned speaking with Sgt. Vincenti during her phone statement and did not mention speaking to him during her sworn statement. § 87(2)(b) indicated in her sworn statement that the desk officer was not present while she was interacting with PO Pena.

### **Potential Witnesses**

- § 87(2)(b) identified a possible male witness, § 87(2)(b) as being present while his car was hit by PO Osilenker. § 87(2)(b) was not certain if the male witness' name was § 87(2)(b) but he knew the male witness was the brother of a barber shop owner. § 87(2)(b) stated during his sworn statement that he would provide the CCRB any witness contact information (encl. 4B).
- On January 23, 2015, a Lexis Nexis database search yielded a phone number and two current addresses for § 87(2)(b) (encl. 13Q). That same day, searches of Yellow Pages and Google Maps revealed one barbershop in the vicinity of the incident location. A call was placed to the barbershop, but the phone number was not in service.
- On January 28, 2015, a call was placed to § 87(2)(b)'s Lexis Nexis phone number and the female respondent stated that she did not know an § 87(2)(b) and she quickly hung up the phone before the undersigned could confirm her address. That same day, a please call letter was mailed to § 87(2)(b)'s Lexis Nexis second current address not associated with the mentioned female respondent, which was returned by the United States postal service with the note "no such address" (encl. 15B-15C).
- As of March 16, 2015, § 87(2)(b) has not provided the CCRB with any potential witness' contact information and ultimately, the investigation was unable to get in contact with § 87(2)(b).

### **NYPD Statements**

#### **Subject Officer: PO VADIM OSILENKER (Encl. 6E-6F)**

- On October 7, 2014, PO Osilenker provided a sworn CCRB statement.
- PO Osilenker's memo book entries (encl. 6A-6D) did not mention an interaction with § 87(2)(b) or hitting a civilian's vehicle. The entries only mentioned responding to a call for additional units at the incident location. PO Osilenker did record the condition of his RMP as "poor," at the start of his tour.
- During his interview, PO Osilenker identified himself as the driver of RMP 3334, while his partner, PO Stanislav Mozheiko, sat in the passenger's seat.
- PO Osilenker stated that § 87(2)(b) had approached the RMP and told him that he had hit his car. PO Osilenker exited the RMP, told § 87(2)(b) he did not hit any vehicles, and told § 87(2)(b) to "get out of the way and back away." PO Osilenker returned to his RMP and drove off to continue canvassing the location for the suspect. PO Osilenker did not know if he or PO Mozheiko used any profanity during the interaction.

- During the interview, PO Osilenker was shown the video footage § 87(2)(b) had provided to the CCRB. After seeing the video, PO Osilenker stated that he thought he told § 87(2)(b) to step out of the way and that he may have used profanity, but he could not hear properly.
- PO Osilenker was shown the video a second time due to not hearing properly the first time and afterwards, he stated that it was possible profanity was used. After a comment made by PBA representative Florence Friedman, PO Osilenker stated that he did not recall using profanity during his interaction with § 87(2)(b).
- After watching the video twice, PO Osilenker still did not mention hitting a civilian's vehicle and the only part of his statement that he wanted to amend was that he did not exit the RMP as he had indicated at the beginning of the interview.

**Witness Officer: PO STANISLAV MOZHEIKO (Encl. 7G-7H)**

- On October 9, 2014, PO Mozheiko provided a sworn CCRB statement.
- PO Mozheiko did not have any memo book entries regarding the incident with § 87(2)(b) only that he and PO Osilenker had responded to a radio transmission regarding a male who was shot at § 87(2)(b) (encl. 7A-7F).
- During PO Mozheiko's interview, he stated that he was the passenger while PO Osilenker was the operator of RMP 3334 at the time of the incident. Both officers were not needed at the location so they drove away.
- PO Mozheiko did not interact with any civilians and did not recall any civilians approaching the RMP to complain about the officers hitting a civilian's vehicle.
- After PO Mozheiko was shown photographs of § 87(2)(b) and § 87(2)(b) as well as watching § 87(2)(b) video footage, he still did not recall any interaction PO Osilenker had with § 87(2)(b).
- PO Mozheiko was not aware of any officer having used profanity against § 87(2)(b) and § 87(2)(b).

**Subject Officer: PO CECILIA PENA (Encl. 8A-8B)**

- On January 23, 2015, PO Pena provided a sworn CCRB statement.
- From May 2014 until September 2014, PO Pena was on medical restriction and was assigned to telephone switchboard operator duties within the 60<sup>th</sup> Precinct stationhouse.
- Due to being on medical restriction, PO Pena was not required to keep a memo book. Although PO Pena was required to be in uniform and have her nameplate shown, she was not required to have her shield on.
- Initially, PO Pena did not recall an incident with § 87(2)(b) and § 87(2)(b). PO Pena was shown photographs of § 87(2)(b) and § 87(2)(b) but she did not recognize them. PO Pena also stated that she did not know who PO Osilenker and PO Mozheiko were.
- After watching the video footage provided by § 87(2)(b) PO Pena remembered § 87(2)(b) and § 87(2)(b) walking into the stationhouse during her end of tour and speaking with Sgt. Vincenti. She recalled seeing the video footage while it was presented to Sgt. Vincenti, who then told § 87(2)(b) and § 87(2)(b) to wait for him while he went upstairs to the second floor of the stationhouse. While waiting for Sgt. Vincenti to return, § 87(2)(b) became upset and he began to curse and yell.
- PO Pena told § 87(2)(b) to leave the stationhouse with a raised voice and he complied with the command after § 87(2)(b) told him to leave. PO Pena did not see if Sgt. Vincenti returned to speak with § 87(2)(b) or § 87(2)(b) because she had ended her tour and left the stationhouse. PO Pena did not mention any other officers who may have been present during the interaction.

- PO Pena did not recall interacting with § 87(2)(b) during the incident and she did not recall interacting with § 87(2)(b) or § 87(2)(b) any time before this incident or filing any paperwork in regards to the alleged accident.
- When PO Pena was initially asked if she used profanity during the interaction with § 87(2)(b) and § 87(2)(b) she stated that she did not think so. PO Pena did not remember if at any point during the interaction, § 87(2)(b) and § 87(2)(b) asked for her identifying information from her. PO Pena did indicate that she was in uniform and her nameplate was visible, but she did not have her shield on. Later in her interview, PO Pena denied using profanity against § 87(2)(b) even though she did not recall interacting with § 87(2)(b). PO Pena then stated she did not remember if she used profanity against § 87(2)(b). At the conclusion of the interview, PO Pena denied refusing to provide her shield number to § 87(2)(b) and § 87(2)(b).

### **NYPD Documents**

- On August 6, 2014, the following documents were requested from the Internal Affairs Bureau (encl. 16B):
  - The 60<sup>th</sup> Precinct Roll Call for Tour 3 on July 5, 2014, the Command Log for July 8, 2014 and July 11, 2014, the vehicle utilization log from July 5, 2014, and a confirmation if an Accident Report – City involved (UF-18) was filed regarding an incident that happened on July 5, 2014.
- All documents were received from the Internal Affairs Bureau on September 18, 2014.
  - The 60<sup>th</sup> Precinct's Roll Call for Tour 3 on July 5, 2014, revealed that PO Osilenker and PO Mozheiko were assigned RMP 3334 (encl. 10B).
  - No UF18s were filed on July 5, 2014 (16B).
  - The Command Log entries for July 8, 2014 and July 11, 2014 did not reveal any entries regarding § 87(2)(b) and § 87(2)(b) or any civilians who filed an accident report (encl. 12A-12CC).

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

§ 87(2)(b) identified RMP 3334 as the marked patrol vehicle that hit his car and the operator of RMP 3334 was the officer who used profanity against him (encl. 3B). The 60<sup>th</sup> Precinct's Roll Call on July 5, 2014 for Tour 3 identified PO Vadim Osilenker and PO Stanislav Mozheiko as the officers assigned to RMP 3334 (encl. 10B). PO Osilenker identified himself as the operator of RMP 3334 and admitted to interacting with § 87(2)(b) § 87(2)(g). § 87(2)(b) and § 87(2)(b) identified PO Pena from her nameplate. PO Pena admitted to interacting with § 87(2)(b) and § 87(2)(b) at the 60<sup>th</sup> Precinct stationhouse. § 87(2)(g)

**Allegation A – Abuse of Authority: On July 5, 2014, in the vicinity of West 24<sup>th</sup> Street between Mermaid Avenue and Neptune Avenue in Brooklyn, PO Vadim Osilenker damaged § 87(2)(b) property.**

**Allegation B – Discourtesy: On July 5, 2014, in the vicinity of West 24<sup>th</sup> Street between Mermaid Avenue and Neptune Avenue in Brooklyn, PO Vadim Osilenker spoke rudely to § 87(2)(b)**

It is undisputed that PO Osilenker interacted with § 87(2)(b) based on both § 87(2)(b) and PO Osilenker's statements. It is also undisputed that PO Osilenker damaged § 87(2)(b) car and used profanity against § 87(2)(b) based on the video footage § 87(2)(b) provided to the CCRB.

The discourtesy was clearly heard and the crack on § 87(2)(b) bumper is also clearly seen on the video footage and subsequent photographs § 87(2)(b) provided (encl. 4H-4I).

According to Patrol Guide Procedure 202-22, a radio motor patrol operator must operate the car in a manner to avoid injury to person or damage to property (encl. 1A-1C). Additionally, NYPD v. Carey, Oath Index No. 579/99 states that an officer may not use profanity toward a civilian without justifiable reason to do so, such as the need to maintain control or gain compliance during a stressful street encounter (encl. 1D-1H).

The video footage displayed PO Osilenker's § 87(2)(g) behavior while operating the RMP. Not only did PO Osilenker hit § 87(2)(b) vehicle, he also reversed the RMP down the street and onto a sidewalk and continued to reverse the RMP down the sidewalk without his lights or sirens on. The video footage showed that PO Osilenker had ample space to vertically reverse the RMP and drive in the correct direction of the one way street, instead of reversing the RMP on an angle and continuing to reverse on to the sidewalk. During their CCRB statements, PO Osilenker indicated that he and PO Mozheiko had left the incident location to continue canvassing for a suspect, while PO Mozheiko indicated that they were not needed at the location so they just left the scene. § 87(2)(g)

Additionally, the video footage did not show any civilians, including § 87(2)(b) being non-compliant or obstructing PO Osilenker's path while he was reversing the RMP § 87(2)(b)

§ 87(2)(g)

**Allegation C – Abuse of Authority: On an unknown date in July 2014, inside the 60<sup>th</sup> Precinct stationhouse, PO Cecilia Pena refused to provide her shield number to § 87(2)(b)**

It is undisputed that PO Pena interacted with § 87(2)(b) and § 87(2)(b) § 87(2)(g)

In § 87(2)(b)'s phone statement (encl. 3B), she indicated that when she had asked PO Pena for her name and shield number, PO Pena stated her name, but said, "I'm not wearing a badge right now, so I can't give you that." In § 87(2)(b)'s sworn statement (encl. 5B), she stated that PO Pena had pointed to her name tag, said her name was on it, and that she was not wearing a badge. § 87(2)(b) phone statement (encl. 3B) corroborates with § 87(2)(b)'s statement that PO Pena had stated her name and said "I'm not wearing a badge right now so I can't give you that". In § 87(2)(b) sworn statement (encl. 4B-4C), he mentioned that PO Pena told § 87(2)(b) "If it looked like she was wearing a fucking badge." § 87(2)(g)

PO Pena acknowledged her interaction with § 87(2)(b) and § 87(2)(b) but she did not remember if at any point during the interaction, § 87(2)(b) and § 87(2)(b) asked for her identifying information. PO Pena did indicate that she was in uniform and her nameplate was visible, but she



did not have her shield on. At the conclusion of the interview, PO Pena denied refusing to provide her shield number to § 87(2)(b) and § 87(2)(b)

§ 87(2)(g)

**Allegation D – Discourtesy: On an unknown date in July 2014, inside the 60<sup>th</sup> Precinct stationhouse, PO Cecilia Pena spoke rudely to § 87(2)(b) and § 87(2)(b)**

It is undisputed that PO Pena interacted with § 87(2)(b) and § 87(2)(b) on an unknown date in July 2014, but the profanity used by PO Pena against them is in dispute.

§ 87(2)(b) never mentioned any profanity used by PO Pena during her phone and sworn statements. In her sworn statement, § 87(2)(b) indicated that PO Pena only screamed at § 87(2)(b) to leave the stationhouse and that she could not remember if PO Pena used any profanity during the interaction at the stationhouse. § 87(2)(b) also does not mention any profanity used by PO Pena in his phone statement. Only in § 87(2)(b) sworn statement did he mention that PO Pena told § 87(2)(b) “If it looked like she was wearing a fucking badge” and also told him to “get the fuck out of the precinct”.

During PO Pena’s interview, she admitted to telling § 87(2)(b) to leave the stationhouse with a raised voice because he was constantly yelling and cursing. Initially, PO Pena stated that she did not think she used profanity during her interaction with § 87(2)(b) and § 87(2)(b). Later in the interview, PO Pena denied using profanity against § 87(2)(b) and that she did not remember if she used profanity against § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) phone statements do not mention profanity used by PO Pena and only in his sworn statement did § 87(2)(b) mention PO Pena’s discourteous remarks. § 87(2)(g)

**Allegation E – Other: PO Vadim Osilenker failed to cooperate with a CCRB investigation as required by NYPD Patrol Guide Procedure 211-14.**

It is undisputed that PO Osilenker damaged § 87(2)(b) vehicle and used profanity against § 87(2)(b) based on the provided video footage and as discussed in Allegation A and Allegation B. § 87(2)(g)

At the onset of PO Osilenker’s interview, he never denied using profanity against § 87(2)(b) only that he never hit any civilians’ vehicles during the incident. After shown the video footage the first time, PO Osilenker said he thought he had told § 87(2)(b) to “step out of the way,” then amended his answer saying maybe he did use profanity, but he could not be certain because he could not properly hear the recording. After being shown the video footage a second time, PO Osilenker said it was possible that there was profanity, but he did not recall telling § 87(2)(b) to “step out of the fucking way.” After a comment made by PBA representative Florence Friedman, PO Osilenker stated that he did not recall if profanity was used. After being given multiple

opportunities to truthfully answer the investigator's questions about his use of profanity, PO Osilenker only stated that he did not exit his RMP to speak to § 87(2)(b)

According to Patrol Guide Procedure 211-14, officers are required to fully answer all pertinent questions regarding facts and observations posed by members of the CCRB during the course of an investigation, and further states that failure to do so is ground for disciplinary action (encl. 1K-1M). Furthermore, in *Ruskin v. Detkin* 32 N.Y.2d 293 (1973), the court determined that palpably evasive and transparently false answers to legal and pertinent questions are equivalent to a refusal to answer without taking responsibility for doing so (encl. 1N-1Q).

§ 87(2)(g)  
PO Osilenker did identify himself as the operator of the RMP in the video footage. § 87(2)(g)  
Despite being given multiple opportunities, PO Osilenker did not admit to using profanity against § 87(2)(b) § 87(2)(g)

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

Team: 3

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date